

February 8, 2001

DIRECTOR'S MEMORANDUM NO. 17-01

MEMORANDUM FOR: NATIONAL OFFICE PROGRAM AND INVESTIGATION
STAFF, REGIONAL ADMINISTRATORS AND DIRECTORS
FOR VETERANS' EMPLOYMENT AND TRAINING

FROM: RONALD G. BACHMAN
Acting Director, Operations and Programs [Signed]

SUBJECT: Process for Disposition of Cases in Which a Federal Agency May
Have Engaged in a Pattern of Hiring Discrimination Against
Veterans

REFERENCE: 38 U.S.C. Chapter 43
The Veterans Employment Opportunity Act of 1998, PL 105-339
5 U.S.C. section 2302

1. **PURPOSE:** To provide guidance to be followed when a VETS investigator, who is investigating a veterans' preference (VP) or Uniformed Services Employment and Reemployment Rights Act (USERRA) complaint, determines that a Federal Agency may have engaged in a pattern of hiring discrimination against veterans.

2. **BACKGROUND:** USERRA provides that VETS may investigate complaints filed by protected individuals, but does not allow for the agency to investigate a general pattern of discrimination by an employer. Similarly, the Veterans Employment Opportunities Act of 1998 (VEOA) authorized VETS to investigate a complaint by a preference eligible that alleges the agency has violated his/her rights under a law/regulation dealing with VP. In addition, VEOA provides that under some conditions a VP violation could also be a prohibited personnel practice (PPP). However, VETS was not authorized to investigate a VP-related PPP.

Title 5 U.S.C. Section 2301 describes merit system principles. Generally, the merit principles provide that all employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management. The Office of Personnel Management (OPM) has oversight responsibilities for ensuring that merit principles are adhered to by agencies that have been granted delegated examining unit authority.

In addition to the VP-related PPP noted above, there are eleven others PPPs, listed in title 5 U.S.C. section 2302(b). Among the eleven, two are particularly relevant to this DM. Section 2302(b)(4) provides it is a PPP to deceive or willfully obstruct any person from competing for employment. Section 2302(b)(6) makes it a PPP to give unauthorized preference or advantage to anyone, thus improving or injuring the employment prospects of any particular employee or applicant. The agency that investigates claims alleging PPPs (including the VP-related PPP established by the VEOA) is the U.S. Office of Special Counsel (OSC).

3. **GUIDANCE:** The following procedures will be followed in the circumstances described above:

- A. The investigator involved will continue to work on the individual VP or USERRA case using normal procedures and without regard to the outcome of the process described herein. At the same time, he or she notifies the Regional Administrator (RA) through normal supervisory channels that it appears to the investigator that the agency being investigated may routinely discriminate against veterans in hiring. The investigator will provide the RA documentation that supports the allegation. Documentation, with analysis, should include:

The list of the job openings posted by the hiring agency; the sources used by the employer to advertise the job openings; the number of applicants (both veteran and non-veteran) who applied; the number of veterans found qualified; the number of veterans hired; the time period involved; demographics concerning the employment pool available to the hiring agency; and any additional documentation that supports the allegation or defends the employer.

- B. The RA will review the investigator's documentation and forward it to the Chief, Investigations and Compliance Division, at the VETS National Office. The RA will also provide a written assessment as to the merits of the investigator's allegation. If it is determined by the National Office that there is no apparent pattern of discrimination, the process ends, with the investigator being notified through the RA.
- C. If the information appears to support the allegation of discrimination, the National Office Investigations and Compliance Division will review the case, consulting with the investigator, RA, Solicitor's office, and others as needed. Following this review, an assessment and recommendation will be provided to the Director, Operations and Programs. The recommendation provided to the Director, Operations and Programs will include the following:

- (1) A plan to contact the agency and offer USERRA technical assistance.
- (2) One or both of two options that may be pursued by VETS.
 - (a) The case could be referred to the OSC for investigation as a PPP.
 - (b) The case could be referred to OPM for review under their merit principle oversight authority.

Information on PPPs is attached but may also be found at: <http://www.osc.gov/ppp.htm>
Information from OPM on their oversight authority is attached but may also be found at:
<http://www.opm.gov/ovrsight/main.htm>

3. ACTION: RAVETS will notify all VETS investigative staff of the procedures to be followed as outlined in this DM.

4. INQUIRIES: Any questions regarding this DM should be directed to Norm Lance (202) 693-4728 or Nick Dawson (202) 693-4711.

Attachments

Expiration Date: Until Superseded.

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